NORTH DAKOTA DEPARTMENT OF
PUBLIC INSTRUCTION

Non-Resident Tuition and Excess Cost

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Nonresident Tuition - Introduction

All students with parents living in North Dakota are residents of a public school district. The residence school district has the responsibility to provide them a free public education if they choose to attend there.

Our legislature has enacted a system for determining the requirements for the payment of tuition by parents or school boards educating students in other districts. Tuition compensates the educating district for educational costs that are financed by local taxpayers.

School districts educating students in other public schools must pay the full cost of education incurred by the admitting district as defined under North Dakota Century Code 15.1-29-12. The costs are determined on the basis of the district's full-time equivalent average daily membership and the educational cost per student defined in 15.1-27-03. Statewide average per student costs for extracurricular activities and capital outlay are added and an amount representing per student foundation aid is subtracted. The educating district receives the foundation aid payment. *SFN 50014 Worksheet for Calculating Tuition* is the form used to determine the tuition charge per student for public school districts.

Tuition for students placed in nonpublic or out-of-state schools are the actual education and related costs not covered by other payments or credits. Foundation aid in these cases is paid to the resident district to reduce the cost to the resident school district.

Nonresident tuition payments are mandatory unless specifically exempted under North Dakota Century Code 15.1.

Tuition may be waived when:

- The resident district and the educating district agree to a waiver (where allowed). (North Dakota Century Code 15.1-29-13.2.a)
- The student has applied for and has been accepted under the North Dakota open enrollment law. (North Dakota Century Code 15.1-31)
- Impact aid is accepted in lieu of tuition for a nonresident student whose parent both resides and is employed at an installation owned by the federal government. (North Dakota Century Code 15.1-29-09)
- A student is enrolled in an approved alternative education program for which tuition is not charged. (North Dakota Century Code 15.1-29-13.2.d)
- A student, at the time of a school district dissolution or reorganization, chooses to attend another district (North Dakota Century Code 15.1-31-07).

Tuition must be paid when:

- Grade level services are not offered by the resident district. (North Dakota Century Code 15.1-29-03.2.
- Students are educated in bordering states. (North Dakota Century Code 15.1-29-01 and 15.1-29-02.1)
- Special education students are placed out of district for educational purposes. (North Dakota Century Code 15.1-32-14)

- Regular and special education students are placed for purposes other than education. (North Dakota Century Code 15.1-29-14)
- Any non-resident student not otherwise exempted by statute.

If the educating school district fails to charge and collect tuition for nonresident students and the resident district notifies the superintendent of public instruction in writing, the educating shall forfeit the foundation aid otherwise payable for the non-resident student.

Grade level services not offered by the resident district

If a school district does not provide educational services to an entire grade level, the students in that grade level may attend school at a public school of their choice. The school district of residence must pay tuition to the admitting school district. Tuition may not be waived in this case.

For purposes of determining whether the grade level is offered, school districts cooperating under a plan approved by the superintendent of public instruction are considered to be a single district.

Beginning July 1, 2011, kindergarten is a required program under North Dakota law. A school district not providing at least a half-day program must pay tuition for the student to the attend kindergarten in another school district.

Students educated in bordering states

A student living within forty miles of another state or in a county bordering on another state may, with approval of the school board, attend a public school or institution in a bordering state. The school board will contract with the bordering state for the education of the student and negotiate the tuition amount.

North Dakota has a special arrangement with South Dakota allowing open enrollment across their borders. Students from South Dakota are claimed for per student aid payments. The net cost for tuition is determined at the state level and applied back to school districts in a subsequent year adjustment.

Special education students placed out of district for educational purposes

Districts unable to efficiently or effectively provide services to students with special needs may place those students in schools outside their districts. These placements are coordinated through the district's special education unit. The following describes the reimbursement process for special education students placed out-of-district for educational purposes.

- The district incurs the full cost based on an approved contract.
- The resident district is reimbursed for the amount in excess of four times the state average cost per day through their special education unit. The unit handles the excess cost reimbursement request from the state and reimburses the district.

The system for claiming reimbursement is roughly as follows:

- Special education units complete a contract required by law providing that the school district agrees to pay the in-state public school as a part of educating the student an amount equal to four times the state average per student cost for elementary or high school cost, depending upon the student's level of enrollment. The resident district is also responsible for transportation costs.
- DPI special education approves the contract (required approval by the superintendent of public instruction).
- DPI fiscal processes the billings from special education units based on the contract. Payments go to the units.
- The units settle with the districts under terms of their individual agreements.

Regular and special education students placed for purposes other than education.

Agency placements

North Dakota Century Code 15.1-29-14 covers tuition responsibility for students placed for purposes other than education. Students falling within this section are commonly referred to as agency placed students. Placements for purposes other than education consist of the following:

- Placement ordered by a state court, tribal court, director of juvenile court or the division of juvenile services at a state-licensed foster home or at a state-licensed child care home or facility.
- Placement by a state or county social service agency in a state-licensed foster home or at a state-licensed child care home or facility.
- Placement in a state-operated institution.
- Voluntary placement by a parent or legal guardian in a state-licensed child care home, facility or program defined in sections 25-01.2-01 and 50-11-00.1.

School district of residence

For placements under NDCC 15.1-29-14, the student's school district of residence is the school district in which the student's custodial parent or legal guardian resides at the time of placement under this section.

The determination regarding the student's school district of residence is valid until the September 15th following the determination. On that date and each September 15th thereafter, the placing agency or the entity funding the student's placement determines the district in which the student's custodial parent or legal guardian resides and notifies the district that it is deemed to be the student's district of residence for purpose of this section. If the student was voluntarily placed and the placement is privately funded, the administrator of the facility or program in which the student is placed provides the required notification.

The state pays the tuition and tutoring charges from state aid to schools funds if, on the September 15th after a student's placement is made:

a) The student's custodial parent or legal guardian establishes residency outside this state;

b) A court orders a termination of parental rights with respect to the student's parents;

c) The student no longer has a custodial parent; or

d) The superintendent of public insturction has determined that all reasonable efforts to locate a parent or legal guardian have been unsuccessful.

Questions regarding residency determinations must be resolved with the placing agency and any corrections must be reflected on the school district notification of placement. The Department will respect the determination made by the placing agency if the evidence used to support it meets the criteria in law.

According to legal counsel, the general rule is residence is not lost until another is gained. Parental rights are terminated by court order under NDCC 14-17-24 or 27-20-44. Unknown or transient residence, incarceration or homelessness does not establish a change in residence of the child or make the state responsible under NDCC 15.1-29-14.3.

School district notification

Agencies placing children are required to notify the interested parties of such placements to assure timely and orderly assumption of financial responsibility by the appropriate school districts. Notices must be sent upon initial placement, change in placement, change in residence district of the parent, and discharge from foster care.

North Dakota Century Code 15.1-29-14.8 requirements:

- The placement agency or entity funding the student's placement shall provide written or electronic notice regarding an initial placement and all subsequent placements of a student to the superintendent of the student's school district of residence and to the superintendent of the admitting district:
    - Within five working days after a placement is made under court order;
    - Within five working days after an emergency placement is make; or
    - At least ten working days prior to any other placement.
- In cases where the student's parent or legal guardian voluntarily places the student and the placement is privately funded, the administrator of facility or program determines the district of residence and completes the notification.
- The notice must include any information requested by the superintendent of public instruction for purposes of determining payment responsibility.
- The placement agency shall afford the district of residence reasonable opportunity to participate in permanency planning for the child.

Payment of Tuition

The school district of residence is liable for tuition upon claim of the admitting district. The *SFN 18119 School District Notification of Child Placement* form (described above) is the controlling documentation used by the educating districts as the basis for billing tuition to the responsible district. Disagreements regarding the residency determination must be resolved with the placing agency and be reflected on this form. The educating entity should enter into a tuition agreement with the resident district at the time the student is enrolled.

The residence district tuition liability is limited to an amount equal to the state average per student elementary or high school costs, depending on the educational level of the student. This amount is payable to the admitting district or facility as part of the cost of educating the student for the school year. The payment may not exceed the actual per student cost incurred by the admitting district or facility. The remainder of the actual cost of educating the student not covered by other payments or credits is paid by the state from funds

appropriated for special education in the case of a student with disabilities, or from funds appropriated for foundation aid in all other cases within the limits of legislative appropriations.

The residence district tuition liability rates are determined annually and are published on the Department of Public Instructions website on the Tuition and Excess Cost Reimbursement page.

The following identifies the payment and reporting processes for excess cost and state responsible students.

Regular education student - district responsible

- The district is liable for educational costs up to the state average cost per day.
- The state reimburses the resident district the amount in excess of the state average cost per day.
- If the educating facility is a public school district, educating district reports the student on the regular student membership and enrollment reports for foundation aid purposes. Credit for foundation aid is reflected in the tuition charge.
- If the educating facility is a private or out-of-state facility, the district of residence reports the student on the regular student membership and enrollment reports for foundation aid purposes.

Special education student - district responsible

- The district incurs the full cost based on an approved contract. The contract amount is reduced by the amount of state aid received for the student.
- The district is reimbursed for the amount in excess of the state average cost per day through their special education unit. The unit handles the excess cost reimbursement request from the state and reimburses the district.

Regular or special education - state responsible

- The state can become responsible for tuition under the following situations:
    - The student's custodial parent or legal guardian establishes residency outside this state;
    - A court orders a termination of parental rights with respect to the student's parents;
    - The student no longer has a custodial parent; or
    - The superintendent of public instruction has determined that all reasonable efforts to locate a parent or legal guardian have been unsuccessful.
- In these cases, the tuition due is paid by the state from funds appropriated by the legislative assembly for the foundation aid program.
- The state pays the tuition to the educating district based on an approved contract or tuition agreement with the School Finance unit.

North Dakota Century Code 54-01-26. Residence - Rules for Determining.

The North Dakota Century Code section 54-01-26 states "Every person has in law a residence. In determining the place of residence, the following rules must be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can be only one residence.

3. A residence cannot be lost until another is gained.

4. The residence of the supporting parent during his or her life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.

5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.

6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.

7. The residence can be changed only by the union of act and intent."

The above tests are considered guidelines and apply in most cases. They are not binding for determining residency for school purposes. The Supreme Court made a ruling favoring the childs interests over that of a district seeking reimbursement for the cost of education in the Anderson Breithbarth case. After noting that a child may have a residence for school purposes distinct and separate from the domicle of the parent, the court determined that a child resides in a school district when the child makes its home in that particular district, whether with its parents, or with other persons, when that place is the only home it has, a place to which she comes and where she remains when not ‘called elsewhere for labor or special or temporary purpose’.

Placements for purposes other than education under 15.1-29-14 establishes the school district of residence as the residence of the custodial parent at placement, not the residence of the student.

From AG opinion on residency – “Anderson –Breithbarth”

"... It is my opinion that if a school age child makes her home in a school district, whether with the child's parents or other persons, and if that place is the child's only home and is the place at which the child remains when not called elsewhere for labor or special temporary purposes, then the child is a resident of North Dakota for school purposes..."

"The term residing in the district' means what it says--a child who makes its home in that particular district, whether with its parents, or with other persons, when that place is the only home it has, a place to which she comes and where she remains when not 'called elsewhere for labor or special or temporary purpose.'" Breithbarth, supra, 245 N.W. at 487.

Nonpayment of Tuition for Agency Placed Students

North Dakota Century Code 15-29-14.5 provides that upon notification and verification that tuition payments are in fact due and are unpaid, all state aid otherwise payable to the student's school district of residence will be withheld until the tuition due has been fully paid.

Tuition agreements or special education contracts should be completed within 30 days of the placement. Most disputes surround the determination of the district of residence. The Department will rely on the notification of placement forms filed by placing agencies for residency determination when enforcing nonpayment of tuition. The educating district is expected to make reasonable efforts to collect the tuition from the district of residence. Where those efforts fail, the educating district can initiate a resolution process by providing the following documentation to the Department of Public Instruction:

- A written request identifying the amounts and time periods for tuition payments that are due and outstanding.
- A copy of the current school district notification of placement form clearly establishing district of residence.

After reviewing the documentation submitted by the educating district, the Department will notify the district of residence in writing that:

- The Department has received notification that tuition has not been paid on behalf of a student determined to be a resident of their school district.
- The determination was based on the the placing agency's School District Notification of Placement form indicating the school district responsible for the tuition for these students under North Dakota Century Code 15-29-14 Student placement for noneducational purposes – Residency determination – Payment of Tuition.

  Disagreements regarding district of residence must be resolved with the placing agency and must be reflected on this form.

If the educating district notifies the Department that this situation has not been resolved, the Department will withhold all state aid payments in accordance with North Dakota Century Code 15.1-29-14 until the tuition has been fully paid.

Frequently Asked Questions:

NDCC 15.1-29-14 covers the responsibility for education costs for agency placed students.

Which residency determination do I pick if the student is transitioning back into the home with the parents, but the agency still has court ordered custody?

To be eligible for under NDCC 15.1-29-14 the placement must be into a state licensed child care home, a state-operated institution, or state-licensed child care home or facility. If the placement no longer meets this definition then the student would be marked as discharged.

What if the student was placed in a drug and alcohol treatment center?

To be eligible for under NDCC 15.1-29-14 the placement must be into a state licensed child care home, a state-operated institution, or state-licensed child care home or facility. Placements into drug and alcohol treatment centers not meeting this definition are not eligible under this section.

Who should fill out the form if the parents still have custody but they are placed in child care home or facility?

The agency funding the placement is required to complete the notification. If the placement is privately funded then the administrator of the facility where the student is placed completes the notification. (NDCC 15.1-29-14.1)

What if the student is his own guardian at the age of 18 and lives in a residential or DD facility?

If the student is his own guardian then he is not an eligible placement under NDCC 15.1-29-14. If a student with disabilities placed in accordance with this section reaches the age of 18 and continues to receive special education services, the student's school district of residence is deemed to be the same as that of the student's custodial parent until the special education services are concluded. (NDCC 15.1-29-14.7)

How long is the resident district responsible for the tuition after notification?

A determination regarding the student's school district of residence is valid until the September 15th following the determination. On that date and each September 15th thereafter the placing agency determines the district in which the student's custodial parent or legal guardian resides and notifies the student's district of residence. (NDCC 15.1-29-1.b)

Under what circumstances is the state responsible for tuition and tutoring charges?

The state is responsible for tuition and tutoring charges where the student's custodial parent or legal guardian establishes residency outside the state, where a court orders a termination of parental rights with respect to the student's parents, or where the student no longer has a custodial parent (e.g., custodial parent is deceased).

The superintendent of public instruction may declare the state responsible for tuition and tutoring charges in rare instances where the custodial parent or guardian could not located at the time of placement. However once determined, a resident district cannot change until a new residence is established. (NDCC 15.1-29-14-3)

What happens if the resident school district does not agree with the residency determination that was made?

All disputes related to residency determination must be resolved with the placing agency and corrections are reflected on the school district notification of placement.

If a parent moves out of the resident district after September 15th, does a new placement need to be created?

The school district notification of placement is the official document establishing responsibility for tuition and tutoring charges. This responsibility is determined annually and does not change during the year. If there was no change in the placement there would be no need for a new notification.